Remarks

Rejection of Claims Under 35 U.S.C. § 102:

Claims 1-22 have been rejected under 35 U.S.C. § 102(b) as being anticipated by *Pressure and Saturation Inversion of 4D Seismic Data by Rock Physics Forward Modeling* (Reservoir Characterization and Time-lapse: Rock Properties and Attributes) (Cole, S., Lumley, D., Meadows, M., and Tura, A., Oct. 10, 2002,: 72nd Ann. Internat. Mtg., Soc. Expl. Geophys., Expanded Abstracts, 2475-2478) (hereinafter, "Cole et al.).

The Applicants traverse the rejection of claims 1-22 as being anticipated by Cole et al. since the publication (Cole et al.) is not a reference that can be used under 35 U.S.C. § 102. Specifically, 35 U.S.C. § 102 states in relevant part:

> A person shall be entitled to a patent unless -
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, ***more than*** one year prior to the date of the application for patent in the United States ....

With respect to subsection (a) of 35 U.S.C. § 102, the Applicants contend that the invention was not (1) known or used by others in this country before the invention thereof by the applicant for patent, or (ii) patented or described in a printed publication in this or a foreign country before the invention thereof by the applicant for patent. Specifically, while the Cole et al. publication names Ali Tura as a co-author, and Mr. Tura is not named as a co-inventor on the present patent application, this is due to the fact that all of the contributions to the content of the Cole et al. publication that

correspond to the claims in the instant patent application were contributed solely by the current named inventors (Steve Cole, David Lumley and Mark Meadows). A sworn Declaration to this effect is attached hereto, wherein the named inventors have declared, "We hereby jointly state that all of the content in the above referenced paper ("Cole et al.") that corresponds to the claims in U.S. Patent Application Serial No. 10/667,831, was authored by ourselves, and no one else." Accordingly, to the extent that the Cole et al. publication is evidence of "invention" of the claims set forth in the instant application, it is evidence only of invention by the named inventors. That is, the Cole et al. publication is not evidence that "the invention was known or used by others", or "patented or described in a printed publication ... before the invention thereof by the applicant for patent.

With respect to subsection (a) of 35 U.S.C. § 102, the Applicants contend that the Cole et al. publication was not published more than one year prior to the date of filing of the application. Specifically, the date of publication of the Cole et al. reference is October 10, 2002, which is ***less than*** one year prior to the date of filing of the current application (i.e., September 22, 2003).

For these reasons, the Applicants contend that the Cole et al. publication cannot be used as a reference under 35 U.S.C. § 102 to reject the pending claims. The Applicants therefore request that the rejections of claims 1-22 be withdrawn.

Rejection of Claims Under 35 U.S.C. § 103:

Claims 23-34 have been rejected under 35 U.S.C. § 103(a) as being obvious over Cole et al. in view of Cross (U.S. Patent No. 6,246,963).

The Applicants traverse the rejection of claims 23-34 as being obvious over Cole et al. in view of Cross since the publication (Cole et al.) does not constitute "prior art" under 35 U.S.C. § 103(a). Specifically, 35 U.S.C. § 103(a) states in relevant part:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. (Emphasis added.)

Further, MPEP 2141.01 sets forth what is "prior art" under 35 U.S.C. § 103 as follows:

Scope and Content of the Prior Art

I. PRIOR ART AVAILABLE UNDER 35 U.S.C. 102 IS AVAILABLE UNDER 35 U.S.C. 103

"Before answering Graham's 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. § 102." Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1568, 1 USPQ2d 1593, 1597 (Fed. Cir.), cert. denied, 481 U.S. 1052 (1987). Subject matter that is prior art under 35 U.S.C. 102 can be used to support a rejection under section 103. Ex parte Andresen, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981) ("it appears to us that the commentator [of 35 U.S.C.A.] and the [congressional] committee viewed section 103 as including all of the various bars to a patent as set forth in section 102."). (Emphasis added.)

Accordingly, if a reference does not qualify as "prior art" under 35 U.S.C. § 102, then it cannot be used as "prior art" to support a rejection under section 103.

For all of the reasons set forth above with respect to the rejections of claims 1-22 as being anticipated by Cole et al., the Applicants again contend that Cole et. al does not qualify as "prior art" under 35 U.S.C. § 102. Therefore, Cole et al. does not qualify

as "prior art" with respect to the instant rejection of claims 23-34 under 35 U.S.C. § 103(a), and should be removed. Following the removal of the Cole et al. reference, the only remaining reference is Cross, which does not alone teach or suggest all of the limitations of Applicants' claims 23-34. Specifically, Cross teaches a method that is different than the method performed by the computer set forth in Applicant's claims 23-34. Accordingly, the rejection of claims 23-34 under 35 U.S.C. § 103(a) should be withdrawn.

Summary

The Applicants believe that this response constitutes a full and complete response to the Office action, and therefore requests timely allowance of claims 1 through 34.

The Examiner is respectfully requested to contact the below-signed representative if the Examiner believes this will facilitate prosecution toward allowance of the claims.

Respectfully submitted,

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Date: May 25, 2005

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